

## **CHAPTER 2. APPEALS, DISCIPLINE AND SEPARATIONS**

### **SUBCHAPTER 3. MINOR DISCIPLINE AND GRIEVANCES**

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#### **4A:2-3.1 General provisions**

(a) Minor discipline is a formal written reprimand or a suspension or fine of five working days or less.

(b) A grievance is an employee complaint regarding any term or condition which is beyond the employee's control and is remedial by management.

(c) The causes for minor disciplinary actions shall be the same as for major disciplinary actions. See N.J.A.C. 4A:2-2.3.

(d) This subchapter shall not apply to local service, where an appointing authority may establish procedures for processing minor discipline and grievances.

(e) In State service, this subchapter shall only apply to:

1. Minor discipline appeals of permanent employees in the career service or persons serving a working test period. Appointing authorities may establish procedures for other employees.

2. Grievance appeals of any employees in the career or unclassified services.

(f) Grievance procedures shall not be used to address any matter for which there is another specific type of appeal to the Commissioner or Board.

(g) These rules shall not be utilized to review a matter exclusively covered by a negotiated labor agreement.

#### **4A:2-3.2 Minor discipline appeal to appointing authority: State service**

(a) Where departmental minor discipline appeal procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) Employees not covered by a negotiated agreement or covered by an agreement that does not address a minor discipline appeal process shall request a departmental hearing within five days of receipt of a notice of discipline or such additional time as may be agreed to by the appointing authority.

1. The departmental hearing shall be conducted within 30 days of such request unless adjourned by the consent of the parties.

2. The burden of proof shall be on the appointing authority.

3. The department shall make a final written disposition of the charges within 20 days of the hearing on Appeal of Minor Discipline Action form, unless the parties have consented to a time extension. The lack of response by the department within this period shall be considered a denial of the appeal.

(c) See N.J.A.C. 4A:2-3.6 for conduct and scheduling and 4A:2-3.7 for appeal to the Board.

#### **4A:2-3.3 Grievance appeal to appointing authority: State service**

(a) Where departmental grievance procedures are established by a negotiated agreement, such agreement shall be the applicable appeal process.

(b) An employee not covered by a negotiated agreement or covered by an agreement that does not address a grievance appeal process shall utilize the appeal procedures in this subchapter.

(c) When a grievance directly concerns and is shared by more than one grievant, the grievants may appeal as a group to the first level of supervision common to the grievants.

(d) A department may consolidate two or more grievances on the same issue and process them as a group grievance. All grievants shall be promptly notified of this action.

(e) An employee may amend a grievance during the initial step at which it is processed. Such amendment may only be made for the purpose of clarification and shall not be utilized to change the nature of the grievance or to include additional items.

(f) The burden of proof shall be on the employee.

#### **4A:2-3.4 Grievance procedure: Step One: State service**

(a) A grievance shall be presented in writing on the Department of Personnel grievance form to the office or individual designated by the department to process the matter. It must be filed within 30 calendar days from either the date on which the alleged act occurred or the date on which the grievant should reasonably have known of its occurrence. Efforts should be made to resolve the matter informally.

(b) All grievances shall:

1. Specify the particular act or circumstance being grieved;
2. State the requested remedy; and

3. Indicate whether the employee is representing himself or herself or the name of the employee's counsel or agent.

(c) The office or individual receiving the grievance shall notify the employee of the scheduled hearing or grievance meeting date within seven days of receipt of the grievance. Such hearing or grievance meeting shall be conducted within 30 days of receipt of the grievance, unless an additional time period is agreed to by the parties.

(d) A written decision shall be rendered within 14 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a negative response.

#### **4A:2-3.5 Grievance procedure: Step Two**

(a) A grievant may appeal to the Department head or his or her designee within 10 calendar days of:

1. Receipt of the written decision at Step One; or
2. A lack of timely response by the department. See N.J.A.C. 4A:2-3.4(e).

(b) The appeal shall be accompanied by material presented at Step One and any written records or decisions from Step One.

(c) The department shall notify the employee of the scheduled hearing or grievance meeting date within 10 days of receipt of the grievance.

(d) A written decision shall be rendered within 21 days after the conclusion of the hearing or grievance meeting.

(e) Lack of response by the department within the periods set forth in (c) and (d) above, unless the parties have consented to a time extension, shall be considered a denial of the grievance appeal.

#### **4A:2-3.6 Conduct and scheduling of hearings and grievance meetings: State service**

(a) A grievant shall be entitled to at least one hearing on a grievance prior to the conclusion of Step Two, unless the grievance is satisfactorily resolved at Step One. In addition, a department, at its option, may also schedule a grievance meeting at either Step One or Step Two of the grievance process.

(b) A department may advance a grievance to Step Two of the grievance process. Timely notice of this action shall be supplied to the grievant.

(c) The following shall apply during a hearing at the department level:

1. An employee may be represented by legal counsel, an authorized union representative or appear on his or her own behalf. An employee may also be represented by such other agent as agreed to by the appointing authority. In a group grievance, a member of the group may be designated as the group representative;

2. Permission for a reasonable number of relevant witnesses shall be granted upon the request of the employee or his or her representative or agent;

3. The employee or his or her representative or agent shall act as a spokesperson for the grievant and one person shall act as a spokesperson for the department; and

4. The spokesperson for either party shall have the right to present evidence and examine witnesses.

(d) Any grievance meeting shall be attended only by a designated supervisor, a spokesperson for the department, the grievant, or a spokesperson in a group grievance situation, and the grievant's representative. The department may also permit the attendance of resource persons possessing direct information important to the clarification of the matter.

(e) Departmental management shall schedule minor discipline and grievance hearings or grievance meetings during the employee's regular work hours as far as possible.

(f) The employee or employee agent, if applicable, and witnesses shall be given time off with pay from their regular work duties to participate in hearings or grievance meetings. Such time off shall include reasonable travel time and shall not extend to any time necessary for the preparation of a grievance.

#### **4A:2-3.7 Appeals from appointing authority decisions: State service**

(a) Minor discipline may be appealed to the Board under a negotiated labor agreement or within 20 days of the conclusion of departmental proceedings under this subchapter, provided any further appeal rights to mechanisms under the agreement are waived.

1. The Commissioner shall review the appeal upon a written record or such other proceeding as the Commissioner directs and determine if the appeal presents issues of general applicability in the interpretation of law, rule, or policy. If such issues or evidence are not fully presented, the appeal may be dismissed and the commissioner's decision will be a final administrative decision.

2. Where such issues or evidence under (a)1 above are presented, the Board will render a final administrative decision upon a written record or such other proceeding as the Board directs.

(b) Grievances may be appealed to the Commissioner within 20 days of the conclusion of Step Two procedures under these rules or the conclusion of departmental procedures under a negotiated agreement.

1. The Commissioner shall review the appeal on a written record or such other proceeding as the Commissioner directs and render the final administrative decision.

2. Grievance appeals must present issues of general applicability in the interpretation of law, rule, or policy.

(c) Appeals shall include:

1. A copy of the Appeal of Minor Discipline Action form or Department of Personnel grievances form and all written records and decisions established during departmental reviews; and

2. Written argument and documentation.

(d) A copy of all material submitted to the Department of Personnel must be served on the employee's appointing authority.

(e) Failure to submit the material specified in (c) above may result in dismissal.

(f) In Commissioner or Board reviews, the employee shall present issues of general applicability in the interpretation of law, rule or policy (see (a)1 and (b)2 above). If that standard is met:

1. In grievance matters, the employee shall have the burden of proof.

2. In minor disciplinary matters, the appointing authority shall have the burden of proof.